

May 28, 2021

Honorable Mark Born, Assembly Co-Chair
Joint Committee on Finance
Room 308 East, State Capitol
P.O. Box 8952
Madison, WI 53708

Mike Queensland
Senate Chief Clerk
Room B20 SE, State Capitol
P.O. Box 7882
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Honorable Howard Marklein, Senate Co-Chair
Joint Committee on Finance
Room 316 East, State Capitol
P.O. Box 7882
Madison, WI 53707

Edward Blazel
Assembly Chief Clerk
Risser Justice Center
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Madison, WI 53703

Dear Representative Born, Senator Marklein, Mr. Queensland, and Mr. Blazel:

In accordance with s. 48.233(4), Wis. Stats, the Department of Children and Families (DCF) and the State Public Defender (SPD) are required to submit a report to the Joint Committee on Finance and the Chief Clerk of each house of the legislature for distribution to the appropriate standing committees regarding the implementation of the pilot program in Brown, Outagamie, Racine, Kenosha, and Winnebago counties to provide counsel to any non-petitioning parent after a petition has been filed in a Child in Need of Protection or Services (CHIPS) proceeding under s. 48.13.

Since the inception of the pilot on July 1, 2018, through December 31, 2020, the State Public Defender (SPD) made approximately 1,700 attorney appointments for parents in the five pilot counties.

County	Appointments During Pilot 7/1/2018-12/31/2020
Brown	367
Kenosha	459
Outagamie	397
Racine	323
Winnebago	181
Total	1727

SPD has conducted multiple in-person and online trainings for attorneys and support staff to understand the process to appoint counsel in these cases and to recruit private bar attorneys to accept conflict of interest appointments.

Anecdotally, SPD has noted several successes and challenges during the pilot program. Challenges have included delays in the appointments of counsel due to several factors, pushback in pilot counties from a new process, and challenges navigating the advocacy on clients' behalf. There were also specific challenges related to the pandemic. Successes included changes to the allegations in the petition, increased understanding of the process by parents, consent decrees instead of formal disposition orders, increased reunification, and increased placement with relatives.

In this report, DCF is submitting child welfare data from the electronic Wisconsin Statewide Automated Child Welfare Information System (eWiSACWIS). The data includes the five pilot counties used by the State Public Defender (i.e., SPD counties) and the other 67 non-SPD counties¹ for two reporting periods:

- Base period (January 1, 2016, to June 30, 2018) which covers the 30 months before the pilot;
- Pilot period (July 1, 2018, to December 31, 2020) which covers the initial 30 months of the pilot.

Table 1 provides separate data for the SPD and non-SPD counties on (a) the number of children removed to Out-of-Home Care (OHC) during each reporting period, (b) the number of children achieving permanency during each reporting period (of those children removed during that reporting period), (c) the permanency rate, (d) the number of children that re-entered OHC during each reporting period (of those children that were removed and then achieved permanency during that reporting period), (e) the re-entry rate, and (f) the median length of the OHC episode in months (of those children that were removed and then discharged during that reporting period).

Table 1: Child Welfare Data from SPD and Non-SPD Counties during the Base and Pilot Reporting Periods

	Base Period 1/1/16 – 6/30/18		Pilot Period 7/1/2018-12/31/2020	
	SPD Counties	Non-SPD Counties	SPD Counties	Non-SPD Counties
a. Number of Children Removed to OHC during Reporting Period	2,396	11,255	2,084	9,831
b. Number of Children Achieving Permanency during Reporting Period (of those children removed during reporting period)	1,200	5,249	1,092	4,711
c. Permanency Rate (=b/a)	50.1%	46.6%	52.4%	47.9%
d. Number of Children that Reentered OHC (of those children that were removed and then achieved permanency during the reporting period)	182	940	186	871
e. Reentry Rate (=d/b)	15.2%	17.9%	17.0%	18.5%
f. Median Length of OHC Episode in Months (of those children that were removed and then discharged during the reporting period)	4.6	4.6	4.2	5.1

Three goals of the child welfare program as it relates to children in OHC are to increase permanency, decrease reentry to OHC, and reduce length of stay in an OHC episode. Table 2 compares the SPD and non-SPD counties based on these three metrics during the pilot reporting period.

- SPD counties had a **higher permanency rate** than non-SPD counties.
- SPD counties had a **lower re-entry rate** than non-SPD counties.
- SPD counties had a **lower median length of OHC episode** than non-SPD counties.

¹ The 67 non-SPD counties may include counties that provide some variation of legal representation to either parents or children outside of the SPD pilot; these are not included in the comparison group data.

Table 2: Comparison of Metrics from SPD and Non-SPD Counties during Pilot Reporting Period

Metric	SPD Counties	Non-SPD Counties	Difference between SPD and Non-SPD Counties
Permanency Rate	52.4%	47.9%	4.5%
Reentry Rate	17.0%	18.5%	-1.5%
Median Length of OHC Episode in Months	4.2	5.1	-0.9

Since the SPD and non-SPD counties had different values for a given metric during the base period, (see Table 1), Table 3 computes the change in each metric from the base period to the pilot period for the SPD and non-SPD counties and then compares the difference.

- The permanency rate increased for both SPD and non-SPD counties from the base to the pilot period, but **SPD counties had a larger increase in the permanency rate than non-SPD counties.**
- The re-entry rate increased for both SPD and non-SPD counties from the base to the pilot period, but **SPD counties had a larger increase in the reentry rate than non-SPD counties.**
- The median length of an OHC episode decreased for SPD counties and increased for non-SPD counties so that **the change in median length of an episode was almost one month lower for SPD counties than non-SPD counties.**

Table 3: Change in Metrics from Base Period to Pilot Period for SPD and Non-SPD Counties

	SPD Counties	Non-SPD Counties	Difference between SPD and Non-SPD Counties
Change in Permanency Rate	2.3%	1.3%	1.0%
Change in Reentry Rate	1.9%	0.6%	1.3%
Change in Median Length of OHC Episode in Months	-0.4	0.5	-0.9

The effects of the pilot program (shown in Tables 2 and 3) may have been affected by the following considerations:

- Child welfare data in eWiSACWIS does not clearly identify which parents in the SPD counties received counsel from public defenders and the extent to which additional specialized training was provided to these public defenders.
- The pandemic impacted courts which may have influenced the metrics in both the SPD and non-SPD counties starting in 2020.

Funding for the pilot program of \$739,600 per year was provided to SPD to offset the cost of the pilot program. Costs have not exceeded the original appropriation.

For further reference, an appendix to this report includes a memorandum provided to DCF from researchers at the Sandra Rosenbaum School of Social Work at the University of Wisconsin – Madison; this memo was prepared in response to a request for a nationwide review of legal representation in Children in Need of Protection (CHIPS) cases.

Based on the promising results from Wisconsin's preliminary pilot data and research indicating successful outcomes for children in other jurisdictions with parent representation models, DCF and SPD support the recommendation to extend the CHIPS pilot program through June 30, 2023.

Thank you for the opportunity to share this child welfare data regarding the SPD CHIPS pilot program.

Sincerely,



Emilie Amundson
Secretary, Department of Children and Families



Kelli Thompson
State Public Defender

APPENDIX



MEMORANDUM

DATE: March 25, 2021

TO: WI Department of Children and Families

FROM: Aaron Reilly, HeeJin Kim, Lonnie Berger, Jessica Pac, & Kristi Slack UW-Madison

RE: State Public Defender Pilot Memo

Introduction

This memorandum has been prepared in response to a request from Wisconsin's Department of Children and Families (DCF) for information about the success of appointing legal representation on Children in Need of Protection (CHIPS) cases. We specifically examine parental representation models that are common across states, results from selected states' evaluations, and policy considerations.

Parent Representation Models

As of 2016, thirty-nine states instituted a right to counsel for parent respondents in child protection proceedings (Gerber et al., 2019). When referring to parent representation models, the most common theme is variation in how states and other jurisdictions deliver and implement these services (Thornton & Gwin, 2012). However, most parental representation models contain at least one of these three components:

1. Establishment of an independent governing body to ensure quality of legal representation (this includes setting compensation and standards, as well as providing training for attorneys);
2. Representation of all parents categorically or based on some criteria (e.g., under 18 years old; type of proceeding, such as termination of parental rights);
3. Assignment of an interdisciplinary team of attorney, parent advocate, and social worker to family (either categorically or by referral through CPS) at time of CPS investigation.

Results from Selected States

Overall results that examine the effect of parent representation programs on child maltreatment related outcomes are consistent. Providing representation for parents in CHIPS² proceedings has demonstrated favorable results: reduced time in out-of-custody placements, reduced time to final disposition, and fewer contested petitions for termination of parental rights. Moreover, advocate counsel for parents allows for earlier intervention, which increases the chances of family reunification or, at times, prevents the separation of families entirely prior to removal and entering the judicial process (American Bar Association, 2009; Courtney & Hook, 2012; Gerber et al., 2019; Haight et al., 2015; Oetjen, 2003; Sankaran & Raimon, 2014; Thornton & Gwin, 2012). Results from specific states are presented below.

² Many other states refer to CHIPS cases as Children in Need of Assistance (CINA) cases.

Examples of State Parent Representation Models

New Mexico

New Mexico piloted the Family Advocacy Program, which provided the services of an interdisciplinary legal team to parents, in three counties starting in 2013 (Gerber et al., 2019). Results show that in the five years prior to implementation, time to permanency increased over time, but in cases after implementing the Family Advocacy Program, time to permanency decreased (Gerber et al., 2019).

New York

New York City's Center for Family Representation (CFR) program is a nonprofit in Manhattan, which uses an interdisciplinary team consisting of an attorney, a social worker, and a family advocate to hasten permanency for all children in foster care. CFR was subject to a quasi-experimental design, with control group selection determined by non-participating propensity score matching to other areas in New York in which CFR is not operating (Gerber et al., 2019). The 2019 analysis utilized administrative child welfare data to compare safety outcomes of 9,582 families and their 18,288 children. Results indicate that, when parents received this interdisciplinary approach, children spent 118 fewer days on average in foster care during the four years following an abuse or neglect case filing and experienced reunification 43% faster than control group children (Gerber et al., 2019). However, there was no effect of the program on chances of entering foster care or child safety outcomes.

Washington

Washington established a State Office of Public Defense (OPD), which focuses on implementing constitutional and statutory guarantees of counsel to parents and ensuring effective and efficient delivery of defense services. OPD set case-load limits (the maximum is set to 80 cases) and attorney standards; granted access to expert legal services and program social workers; installed a mechanism for oversight of attorneys; and provided ongoing training and support (Courtney & Hook, 2012; Thornton & Gwin, 2012). OPD has had multiple rigorous evaluations of their program (Thornton & Gwin, 2012). Findings have consistently associated OPD with increased family reunifications, fewer reunification failures and case re-filings, reduced time to all permanency outcomes, improved case participation by parents, and better access to services (Thornton & Gwin, 2012). Courtney and Hook (2012) conducted the most recent evaluation, showing that there was an 11% increase in the rate of reunification in OPD counties, as compared to counties without OPD. Converting these rates into actual time shows us that children in OPD counties spend, on average, 27 fewer days in foster care. Additionally, there was a 104% increase in the rate of adoption, and an 83% increase in the rate of guardianship in OPD counties, which accelerated permanent placements when reunification could not be achieved by approximately 12 months.

Policy Considerations

Two important facets of the provision of legal representation to parents are important to keep in mind. First, there may be large up-front costs with legal representation provision, but these costs may be offset in the long run (Thornton & Gwin, 2012). Recommendations surrounding cost considerations from New Mexico's Family Representation Task Force (2020) suggested the creation of an independent agency with budgetary independence.

Second, recommendations consistently point to an interdisciplinary approach, particularly one that aims to guarantee high quality legal representation (Gerber et al., 2019; Family Representation Task Force, 2020). New Mexico's Family Representation Task Force on best practices and research across the country and found that the development of high-quality legal teams and the creation of an infrastructure to support these teams would lead to the best outcomes. Infrastructure, in this context, refers to the organization of offices; staff and contracted personnel, caseloads, and compensation; and supports such as training, expert witnesses, and quality monitoring.

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